

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(PJC)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S OPPOSITION TO "DEFENDANTS' JOINT
MOTION *IN LIMINE* TO PROHIBIT ANY SUGGESTION BY PLAINTIFFS
THAT ANY TRADE ORGANIZATION SPEAKS
FOR ANY DEFENDANT" (DKT. #2414)**

Plaintiff, the State of Oklahoma ("the State"), respectfully opposes "Defendants' Motion *in Limine* to Prohibit Any Suggestion By Plaintiffs That Any Trade Organization Speaks for Any Defendant" (DKT #2414) ("Defendants' Motion") and asks that it be denied in its entirety.

Defendants' Motion sets forth almost identical arguments and legal authority as "Defendants' Motion *in Limine* to Exclude References to Trade Organizations or Organizational Documents, Communications, Seminars, or Meetings Without Specific Evidence That All Defendants Were Members, Attended, or Received Such Documents or Communication" (DKT #2430). In fact, the relief set forth in DKT #2430 is so broad that it would encompass the relief sought in the instant motion. Thus, rather than repeating the arguments set forth in the State's response to DKT #2430, the State incorporates those arguments here by reference, and directs the Court to that response (DKT #2504).

The general category of relief sought in Defendants' motion, "any suggestion that a trade organization speaks for any Defendant," is extremely difficult to identify without specific references to particular evidence and the reasons why that evidence should be excluded. Defendants fail to provide any specific examples of the evidence to which the relief they seek should be applied. Trade organization evidence is varied in its nature, and the manner in which it could be introduced and used at trial is varied as well. Some trade organization evidence may be appropriately referenced as speaking for Defendants, while other trade association evidence may be more appropriately introduced because it demonstrates what was known or knowable by Defendants at a particular point in time.

For example, Don Allen, who served as Executive Director of the Poultry Federation, testified that statements on behalf of the Poultry Federation were made with the authority or approval of the Poultry Federation's Board of Directors or its committees, and that certain letters and statements would have been expressly provided by those entities, and approved by the chairman of a committee or the board of directors. Ex. 1, Allen Depo, pp. 41. Some of the Defendants had personnel serving on that board of directors and on committees, thus directing the statements of the Poultry Federation which represented their interests. *See, e.g.*, Ex. 2, Rutherford Depo., pp. 11-12 (Simmons former vice president explaining that he chaired Poultry Federation Environmental Committee). This example illustrates why Defendants' Motion is improperly broad and premature; until specific evidence is identified, and the context that it will be used is determined at trial, this issue cannot be decided in any meaningful way. For some trade organization evidence it may be entirely appropriate to suggest that trade organizations

were speaking for Defendants, especially when Defendants' representatives authorized the actions or statements of that trade organization which operated on Defendants' behalf.

Defendants cite a case in this motion that they did not cite in DKT #2430, *Smith v. Arthur Anderson LLP, et al.*, 2005 WL 5976558 (D. Ariz. Dec. 1, 2005). This decision does not provide any analysis or discussion of the issues in that case. *Smith*, 2005 WL 5976558, *1 (D. Ariz. Dec. 1, 2005). Defendants also cite defendants' motion in the *Smith* case, a two and a half page document that sheds no light on the issues before the Court. In *Smith*, the defendants' motion sought to prevent the plaintiff from referring to defendants with pejorative names, or collectively as "defendants." *See Motion, Smith v. Arthur Anderson LLC*, 2005 WL 2516854, pp. 1-2. In short, the *Smith* ruling and argument have nothing to do with the relief Defendants are seeking here, which pertains to attributing statements of trade organizations to Defendants, not referring to Defendants in a negative manner or as a group. This case provides no support for the relief Defendants seek.

For the reasons stated herein and in the State's "Opposition to 'Defendants' Motion *in Limine* to Exclude References to Trade Organizations or Organizational Documents, Communications, Seminars, or Meetings Without Specific Evidence That All Defendants Were Members, Attended, or Received Such Documents or Communication (DKT # 2430)," Defendants' motion should be denied.

Respectfully Submitted,

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I hereby certify that on this 20th day of August, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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